

C O P Y *in opinion*

September 21, 1954

Honorable Thomas E. Flynn, Jr.
City Solicitor
Portsmouth, New Hampshire

Dear Tom:

You have inquired whether a vacancy in the Portsmouth City Council exists by virtue of the fact that a member thereof has moved outside the City to live.

You are advised that it is my opinion that no vacancy exists until determination of the matter is made by the Council itself under R. L., c. 64, s. 7, or there is a removal from office within the meaning of s. 57 of the Charter of the City of Portsmouth.

The Charter of the City of Portsmouth was enacted in 1947 (L. 1947, c. 398). At the time of its enactment the definition of vacancy contained in s. 57 did not include reference to removal from the City of Portsmouth, although R. L., c. 59, s. 46 as applicable to town officers theretofore specifically provided that a person elected to a town office creates a vacancy by removing from the town. The provisions of R. L., c. 62, s. 2, providing for general blanket application to cities of statutes relative to town matters, is inapplicable in view of the manifest legislative intention in the Charter of the City of Portsmouth excluding from the definition of vacancy, removal from the City.

I have written this opinion because this is a matter of importance and because you have personally requested it although in the final analysis, as you know, this office is not required to render

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opinions to municipalities having available to them their own competent counsel such as yourself. For your information, I have serious doubt as to whether there is any ground for removal of the incumbent during the balance of his elected term simply because of removal from the City. Obviously, the Council itself may vote that such removal constitutes disqualification but I do not believe that if this does not transpire a petition to the court to declare a vacancy would result in a judicial finding of the existence of a vacancy, in view of the Charter provisions.

Cordially,

Louis C. Wyman
Attorney General

w/d